

Exhibit 4

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STUDENTS FOR FAIR ADMISSIONS, INC.,

Plaintiff,

Civil Action
No. 14-14176-ADB

v.

October 19, 2018

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE, et al.,

Pages 1 to 263

Defendants.

TRANSCRIPT OF BENCH TRIAL - DAY 5
BEFORE THE HONORABLE ALLISON D. BURROUGHS
UNITED STATES DISTRICT COURT
JOHN J. MOAKLEY U.S. COURTHOUSE
ONE COURTHOUSE WAY
BOSTON, MA 02210

JOAN M. DALY, RMR, CRR
KELLY MORTELLITE, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
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1 witness, Your Honor, so that we didn't have to recall Dean
2 Fitzsimmons. But it actually hasn't been admitted into
3 evidence yet.

4 BY MS. HACKER:

5 **Q.** Ms. Driver-Linn, you were designated as Harvard's
6 corporate representative to talk about OIR reports at your
7 deposition, right?

8 **A.** That's right.

9 **Q.** And this is one of the documents you reviewed to prepare
10 to testify on Harvard's behalf about OIR reports; is that
11 right?

12 **A.** I'm sorry. I can't quite remember which part of the
13 deposition was as the corporate representative and which part
14 was not.

15 **Q.** Do you remember being designated as a corporate
16 representative to talk about OIR reports and this report
17 specifically at your deposition?

18 **A.** I remember talking about this document specifically at
19 the deposition.

20 MS. HACKER: Your Honor, SFFA offers P9.

21 MS. ELLSWORTH: Your Honor, I'm not sure being a
22 corporate representative at deposition lays foundation. The
23 witness testified at her deposition she didn't recall the
24 document from 2013. She can certainly speak to it. We don't
25 object it to being used in the same way with Dean

1 Fitzsimmons. I'm just not sure that a foundation has
2 actually been laid.

3 THE COURT: I am going to let her testify about it.

4 MS. HACKER: If I may, just one more question on
5 this. I think I may be able to clear this up.

6 THE COURT: I'm wondering who is going to be able
7 to lay a foundation for them. And the document seems fair
8 game.

9 MS. ELLSWORTH: There is an individual who will be
10 testifying later who is the person who created the document
11 who would be the likely person to lay a foundation with.

12 THE COURT: So you can get it now through her, or
13 we'll do it through a later witness. But you can certainly
14 question her about it now. If you want to try and get it in
15 through her, that's fine.

16 BY MS. HACKER:

17 **Q.** Ms. Driver-Linn, you've seen this document or one very
18 much like it, correct?

19 **A.** Yes, I have.

20 MS. HACKER: Your Honor, this witness has
21 foundation. She's seen the document. She reviewed it for
22 her deposition. She oversaw the office of institutional
23 research that created this document for ten years. She
24 certainly has foundation to testify about it.

25 THE COURT: Well, I'm going to let her testify

1 about it. I'm not sure you've elicited -- you may be able to
2 elicit a foundation based on the fact that she oversaw the
3 work of the office during that time period and what her
4 responsibilities were in that way, but I don't think you've
5 laid it yet. Or that you have a chance to lay it with her or
6 they're representing that the author of the document will be
7 on later. So you can try it through her. And if it doesn't
8 come in through her, it will come in later. I don't think
9 they're objecting to you putting it up on the screen now, in
10 any event.

11 MS. ELLSWORTH: No, and the witness can be
12 questioned on it. No objection on that. It's just a
13 foundation issue.

14 BY MS. HACKER:

15 Q. Ms. Driver-Linn, let's start with the date on the first
16 page of this document. You see that it says February 14,
17 2012, right?

18 A. I do see that.

19 Q. But this document was actually created in February
20 of 2013?

21 A. I believe so.

22 Q. And you believe it's likely that this document was
23 created by Erica Bever and/or Mark Hansen?

24 A. No. I believe it was Mark Hansen.

25 Q. Ms. Bever -- I'm sorry.